

Joseph Downing #1261309
Name and Inmate Booking Number

High Desert State Prison
Place of Confinement

P.O. Box 650
Mailing Address

Indian Springs, NV 89070
City, State, Zip Code

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Joseph Downing,
Plaintiff

vs.

- (1) Brian Williams (Warden)
- (2) JANE DOE (Intake),
- (3) JANE / JOHN DOE (Medical)
- (4) John / JANE DOE (C.M.D.)
- (5) SGT. VAL
- (6) John & Jane Does Defendant(s):
Roes 1 thru xx 1 thru xx

Case No. 2:22-CV-02175-CDS-EJY
(To be supplied by Clerk of Court)

CIVIL RIGHTS COMPLAINT
BY AN INMATE

- ☐ Original Complaint
☐ First Amended Complaint
☒ Second Amended Complaint

☒ Jury Trial Demanded

A. JURISDICTION

- 1) This Court has jurisdiction over this action pursuant to:
☒ 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983
☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971)
☐ Other: _____

2) Institution/city where Plaintiff currently resides: High Desert State Prison

3) Institution/city where violation(s) occurred: Indian Springs, Nevada

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B. DEFENDANTS

1. Name of first Defendant: Brian Williams. The first Defendant is employed as:
WARDEN at High Desert State Prison
(Position of Title) (Institution)
2. Name of second Defendant: JANE DOE. The second Defendant is employed as:
INTAKE CASE WORKER at High Desert State Prison
(Position of Title) (Institution)
3. Name of third Defendant: John/JANE DOE. The third Defendant is employed as:
Doctor / Physician/medical at High Desert State Prison.
(Position of Title) (Institution)
4. Name of fourth Defendant: John/JANE DOE. The fourth Defendant is employed as:
Offender management at High Desert State Prison
(Position of Title) (Institution)
5. Name of fifth Defendant: SGT. VAL. The fifth Defendant is employed as:
H.DSP. Corrections officer (sgt) at High Desert State Prison.
(Position of Title) (Institution)

If you name more than five Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. NATURE OF THE CASE

Briefly state the background of your case.

On 9/27/2022 I Arrived At H.DSP, Upon Arrival I told Intake Doctors/Nurses about my gout and showed my swollen (L) knee, About my sleep Apnea, and positive TB tests and chest X-Rays at CCDC for the past 2 years Before Arriving @ H.DSP I was man Down For Intestinal Bleeding in the Infirmary from 12/2/22-12/10/22 and never was Examined. I was sentenced to Aggregated & stipulated 3-18 years, On Arriving HDSP offender management (Intake) put me in AS 4-18 years. On 12/5/22 I saw Parole, Parole told me my minimum was 4/1/2024 to correct my J.O.C. in court. On 6/5/2023 I saw Parole again on the same J.O.C. and on 6/6/2023 my JOC was Amended, 6/5/23 Parole was Denied Again til 4/1/24.

D. CAUSE(S) OF ACTION

CLAIM 1 PAGE #1

1. State the constitutional or other federal civil right that was violated: H.O.S.P. HAS NO Medical/Infirm. Doctor/physician. My medical illness's Are left Untreated. 8+14th Amendment

2. Claim 1. Identify the issue involved. Check only one. State additional issues in separate claims.

☐ Basic necessities

☒ Medical care

☐ Mail

☐ Disciplinary proceedings

☐ Exercise of religion

☐ Property

☐ Access to the court

☐ Excessive force by officer

☐ Retaliation

☐ Threat to safety

☐ Other: _____

3. Date(s) or date range of when the violation occurred: 9/27/22 - January 23, 2023 and County

4. Supporting Facts: State as briefly as possible the FACTS supporting Claim 1. Describe exactly what each specific defendant (by name) did to violate your rights. State the facts clearly in your own words without citing legal authority or argument.

On 9/27/22 I came to H.D.S.P., I notified the H.D.S.P. Intake nurse about ~~my~~ existing/past medical illness's and my medical conditions, past and present. Current, Gout in my (L) knee, I was told I'd get a X-RAY on my knee, 3 weeks later I got it after swelling went down. For 3 weeks I could barely walk, I got no help or treatment or meds for 4-5 weeks, only IBUprofen which doesn't cure Gout. I notified the Intake nurse about my positive Tuberculosis tests the past 2.5 years at Clark County Detention Center. The nurse issued me a chest X-RAY, the TB test was positive, chest X-RAY was negative, the chest XRAY was given roughly 7 days or so later (roughly) however my Gout XRAY took 3 weeks (roughly) to be taken, not at the same time as my chest XRAY. The Fish Tank Doctor/prescriber I saw in the middle of October/End of October did order me Gout medicine (Allopurinol) + (Naproxen) and diagnosed me with High Blood Pressure, 144/106 88 Beats A minute, I was prescribed Lisinopril, I received my KOP meds a week later End of October 2022 Finally, only for my Gout and High BP. my TB medicine was not given to me until 1/19/23, 4 months after arriving at H.D.S.P. I also told

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CLAIM #1

PAGE #2

MEDICAL CARE

The HDSP Intake Nurse About my Severe Sleep Apnea, I told the Fish tank Doctor/prescriber About my Sleep Apnea Also and A Psychiatrist and I have 2 Medical Referrals For Sleep Apnea. I WAKE UP CHOKING and PASS out, I've Fainted, Fell, From my Bunk trying to Notify STAFF By Pushing my Cell Button, I Dont make it to the button Before I Faint or PASS out and When I Do Make it the C/O's Dont Respond. My Cellmates have Both Witnessed this, I've Grievanced and Notified Medical A Dozen+ Times At H.D.S.P., I've Filled out the STOP-BANG Sleep Apnea Questionnaire and 5-8 "yes" Answers on the STOP-BANG Sleep Apnea is High Risk, I Filled 2 out and GAVE one to ED in the Infirmary in December 2022 and He Weighed and Measured my NECK to get Correct Answers and I Scored 7 out of 8 "yes" on the STOP-BANG, I Am Super High Risk with Multiple witness's That I Stop Breathing, Choke and PASS out Due to Sleep Apnea. Sleep Apnea is A Medical Condition you can Die From and H.D.S.P. Refuses to treat me and Have A Sleep Study Done so I can get A CPAP Machine and Not Die From my Chronic Severe Sleep Apnea. I Am A Army Veteran and have a Claim In with the V.A. and Veteran EVALuation Services Wants me to Do A Breathing test and will pay For Everything so its Free to H.D.S.P., H.D.S.P. Medical Just has to Contact Veteran EVALuation Services in Houston, TEXAS to

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CLAIM #1

PAGE #3

MEDICAL CARE

Schedule the Breathing test which will be Done in LAS Vegas or Any place Convenient for HDSP to bring me to Do the Breathing test/Sleep study and its Free to HDSP Because I Am A Veteran and HDSP Refuses to Contact Veteran Evaluation Services and to treat my Sleep Apnea. On 12/12/22 I was Man Down For Rectal Bleeding that had Been going on for 3 Days. I put in 3 Emergency Grievances and on 12/12/22 ^{@1700hours} I was Finally Brought to the H.D.S.P. Infirmary. I had my BLOOD Pressure Checked and was Put in A Holding cell with only A toilet, no water For "observation For 24 hours," I slept on A concrete bench And at Around APPROX. 0630-0700hrs I was moved to a 4 Shower CAGE in the BACK of the Infirmary with A Bench and 4 Shower STALLS, no toilet, no sink, and When I had to Urinate, I had to Do so in a shower STALL. I was Left on the metal Bench For Roughly 8-10 hours and then I was moved to A Room with a hospital Bed, toilet and sink that had been open since I Got to The Infirmary on 12/12/22 At APPROX. 1700hrs, I was Forced to be "observed" in A concrete holding TANK, A shower, where I was not examined or Even had Access to Drinking Water ^{and} or A toilet. I was not Asked How I was Doing By Any medical staff After my BP was taken on 12/12/22 @1700hrs, until Wednesday Afternoon

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CLAIM #1

PAGE #4

MEDICAL CARE

When Nurse ED took my BP and Gave me IBAופן on Wednesday 12/14/22 and I told him my Kop, High BP meds were out and my Gout meds which got Re-ordered, But only Delivered A week After I Left the Infirmary on 12/16/22. I Gave A stool sample with Blood in a U.A. Cup and Showed Nurse ED. I WAS Given A Colon CANCER test and Produced it to ED on 12/15/22 TO be sent to A LAB in Phoenix Arizona to be tested For Colon Cancer. My Blood in my stool still Continued Even After I Left the Infirmary on 12/16/22, I NEVER SAW A Doctor, I NEVER SAW A Physician, my Blood in my stool was never Diagnosed, I WAS NOT X-RAYED For ulcers, or ULTRA-Sound EXAM, I WAS NEVER tested For Hemroids, ulcers, I WAS NEVER given stool Softeners which I ASKED For, IBAופן 2X WAS All I got, And A Colon Cancer test which I've ASKED For the Results But NEVER Given, I Doubt it was Even sent to the LAB in Phoenix Arizona to be tested. I have Days still where my stool is Bloody and Red, my stool is Soaked A DARK Red and I AM PASSING RAZOR Blades it feels Like. I Have Prior Medical History of this, NO Release of Info For that hospital(s) Were Done. I AM Left Bleeding and Untreated, Just Left to Die and Suffer in Pain. I WAS Discharged on 12/16/22 From Hosp Infirmary, untreated

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CLAIM #1
PAGES
MEDICAL CARE.

On 4/11/23 I Finally had A Sleep Study Done But still have Not Received my Results or A CPAP and Medical Sent me A Kite Saying I would get my CPAP 6-9 weeks After my Sleep Study, it has Been over 9 weeks and I still Do not have my CPAP, I've even Kited Medical to ASK if my Family Can Buy a CPAP and Send it in and NO Response From Medical on that or When I will get my CPAP and Never Any Answer on my Colon Cancer test From 12/15/22, NO Answer on my Blood Draws From my LAB work on my TB status. Today is 6/26/2023.

CLAIM 2, PAGE #1

1. State the constitutional or other federal civil right that was violated: NO Hygiene, NO toothbrush, NO Lop medicine, NO Towel, NO Shower Hygiene, 1 Set of clothes.

2. Claim 2. Identify the issue involved. Check only one. State additional issues in separate claims.

- ☒ Basic necessities ☐ Medical care ☐ Mail
☐ Disciplinary proceedings ☐ Exercise of religion ☐ Property
☐ Access to the court ☐ Excessive force by officer ☐ Retaliation
☐ Threat to safety ☐ Other: _____

3. Date(s) or date range of when the violation occurred: 12/16/22 - 12/28/22

4. Supporting Facts: State as briefly as possible the FACTS supporting Claim 2. Describe exactly what each specific defendant (by name) did to violate your rights. State the facts clearly in your own words without citing legal authority or argument.

Upon Leaving the Infirmary on 12/16/22 I was placed in unit 12B cell #9. I was given 4 blue pants, 1 blue shirt, 1 T-shirt, 1 Boxer, 1 pair of socks, 2 sheets, a blanket and mattress. My property and basic necessities were never supplied to me until 12/28/22. I could not shower or brush my teeth for 12 days, I grieved multiple times to get my property and spoke with SGT. VAL in unit 12 multiple times and SGT VAL asked C/O West to get me a cup and spoon so I could have a eating and drinking utensil, I was never given a cup or spoon to eat for 12 days, or brush my teeth, because I was not given a toothbrush, that was on 12/27/22 and C/O West did not give me anything before his end of shift @ 1300hrs on 12/27/22 as SGT VAL ordered him to. On 12/28/22 I received my property finally and got a receipt, instead of HDSB sending me back to my old cell 4C-42, I was put in 12B #9, all my property was left in my old cell 4C-42 from 12/12/22 - 12/26/22, I was intentionally put in a new cell and unit after leaving the Infirmary on 12/16/22 and left

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CLAIM #2

PAGE #2

Basic Necessities

Without my Hygiene, Property and Basic Necessities, I was Never even given toilet PAPER until Saturday 12/17/22. I was Never given soap to shower. I wore the SAME Clothes for 12 DAYS, I had NO Laundry Bag or Soap to Even WASH my clothes, NO toothbrush, I was Deprived of BASIC Human Right Necessities. I went A week without my KOP High BP Meds; Gout Meds. My KOP were Refilled Finally Before I got my Property BACK, which had my KOP'S. ON 1/23/23 my High Blood pressure medicine and NAProxen were Not Refilled and I Had Gotten Dizzy, Limbs going numb and I Emergency Kited/Grievance TO Get my B.P. Meds Re-ordered When it is suppose to Be Automatic, I Kite EARLY to get my Refills Before it runs out But Medical Never Responds to Kites, my High B.P. medicine was Reordered on 1/24/23 and I Received it on 1/29/23 and went 14 DAYS with out my Blood pressure medicine which is DANGEROUS and COULD Kill me By taking them Then Not Having them for 2 weeks When I Am Suppose to take it Daily, my NAProxen WAS Not Refilled and it is Suppose to Be Automatic AS Well, the Refill on the RX LABEL on the pill Bottle SAYS Refill By 1/15/23 RX# 518997, NDC: 68462-0190-05

CLAIM 3

1. State the constitutional or other federal civil right that was violated: I Had NO Property For 12 Days, NO Legal mail, NO Stamps, Paper, Envelopes to Respond to Courts.

2. **Claim 3.** Identify the issue involved. Check only one. State additional issues in separate claims.

☐ Basic necessities

☐ Medical care

☐ Mail

☐ Disciplinary proceedings

☐ Exercise of religion

☐ Property

☒ Access to the court

☐ Excessive force by officer

☐ Retaliation

☐ Threat to safety

☐ Other: _____

3. Date(s) or date range of when the violation occurred: 12/16/22 - 12/28/22.

4. **Supporting Facts:** State as briefly as possible the FACTS supporting Claim 3. Describe exactly what each specific defendant (by name) did to violate your rights. State the facts clearly in your own words without citing legal authority or argument.

On 12/21/22 C/O Saint Delivered me Legal mail from The Administrative Office of the Courts, West Pasco Judicial Center 7530 Little Rd. Suite #201, Newport Richey, FL 34654.
In December on 12/5/22 The Letter was Postmarked, But I never Received it until 12/21/22, I had a 20 Day window to Respond From 12/5/22 If I objected to the matter At Hand, Not only was my Legal mail not Delivered in A timely manner to me and took 16 Days For HDSP to give me my mail, But At this time I had NO Property to Send A Response on 12/21/22 Because my Paper, Envelopes, Stamps etc... Were still in my old cell 4C-42 and I was in 12B9, my Property was given to me on 12-28-22, which was past the 20 Day Deadline to Respond even if I wanted to I couldn't, I had NO Property, But on top of that HDSP took 16 Days to Deliver my Legal mail to me. I Brought these Issues up with SGT VAL and Caseworker Lopez multiple times along with C/O MORA and C/O West, Nothing was Done to correct this mail/Legal mail Issue. At HDSP, A Letter from Florida from my mom still take 2-3 weeks.

If you assert more than three claims, answer the questions listed above for each additional claim on a separate page.

D. CAUSE(S) OF ACTION

CLAIM 4

Page 1

Offender Management

1. State the constitutional or other federal civil right that was violated: Judgement of Conviction
Errors holding me past my 3 year minimum without A legal Parole hearing
Due process, cruel/unusual punishment.
2. Claim 1. Identify the issue involved. Check only one. State additional issues in separate claims.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Medical care	<input type="checkbox"/> Mail
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Property
<input type="checkbox"/> Access to the court	<input type="checkbox"/> Excessive force by officer	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Threat to safety	<input checked="" type="checkbox"/> Other: <u>Judgement of Conviction / Parole + Probation</u> <u>Offender management</u>	
3. Date(s) or date range of when the violation occurred: 12/5/2022 and 6/5/2023.
4. Supporting Facts: State as briefly as possible the FACTS supporting Claim 1. Describe exactly what each specific defendant (by name) did to violate your rights. State the facts clearly in your own words without citing legal authority or argument.

On 12/5/2022 I saw Parole Board And Parole told me to come back in a year that my Judgement of Conviction sentence is a 4-18 year sentence and my Parole Eligibility is 4/1/2024. Parole told me to come back in A year or correct my J.O.C. with A Judge to Amend the J.O.C. I sent A motion to modify my sentence which was Granted. On 6/6/2023. HDSP offender Management Tried to correct their Errors and over Ruled A District Court Judge and my J.O.C. at my 6/5/2023 Parole Board hearing my Judgement of Conviction was the same and my Parole was Denied For The second time Because P+P Goes off the Judgement of Conviction which can only Be corrected and Amended By A Judge, not offender Management. my Parole eligibility Date is 4-21-2023, my sentence is 3-18 years Aggregated and stipulated As my Guilty Plea Agreement states signed by Judge Jones and sentenced.

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CLAIM #4

Page 2

J.O.C. / Offender management

on 9/6/2022 By Judge Bluth, However on Count #2 Att. Robbery I was sentenced to 2-5 years with A consecutive 2-5 years for the D.W. Enhancement which is how P+P gets my sentence to be 4-18 years not 3-18 years even though it states Aggregated-Count 1 + Count 2 concurrent maximum 18 years with a minimum of 3 years. Because I saw parole for the second time on 6/5/2023 it was the same J.O.C. and my parole was denied until 4/1/2024. In exact words on my 6/5/2023 Parole Board Denial papers it states

"It is the order of the board that Further Consideration of Parole is Denied to the Earlier of until 4/1/2024 or the Expiration Date on the sentence(s)."

meaning Parole is Denied "on the Earlier of", meaning Count 1, And my parole eligibility on the latter, Count 2 is still 4-1-2024 which proves Parole and Probation is Basing their Judgement on my Incorrect J.O.C. my Amended J.O.C. Wasnt Amended and Filed with the Courts until After my 6/5/2023

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CLAIM #4

Page 3

J.O.C./Offender Management

Parole hearing. My J.O.C. WAS Amended on 6/6/2023 By Judge Villani at 1400 hours A Complete DAY After my 6/5/2023 Parole hearing, The Amended J.O.C. WAS Amended AS Follows:

"It is hereby ORDERED The Defendants Sentence IS Amended AS Follows: Defendant Adjudged Guilty But Mentally Ill. AS to Count 2 - a maximum of Five (5) years with a minimum Parole Eligibility of (2) two years in N.D.O.C.; Plus A Consecutive term OF A maximum of Five (5) years with a minimum Parole eligibility of ONE (1) year For the Deadly Weapon Enhancement, Concurrent with Count 1."

This is Solidified in District Court CLACK County NEVADA AS FACT in AS Follows:

The State of NEVADA

CASE #

V.

C-20-349098-1

Joseph Dwaine Downing Jr.

Dept. 3

I have Not Been Allowed A Lawful and Legal Parole hearing and I am over my 3 year minimum unlawfully Detained in

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CLAIM #4

Page 4

J.O.C. / offender management

High Desert State Prison without being awarded a parole eligible parole hearing. H.D.S.P. overruled my J.O.C. and put me in for a second parole hearing illegally and unlawfully without my J.O.C. being amended by a judge which caused me to have 2 parole hearings on an incorrect J.O.C. of 4-18 years and my 6/5/2023 parole being denied until 4-1-2024, when my correct amended J.O.C. parole eligibility date is 4-21-2023 and today is 6-26-2023 and I have not had a legal, lawful, correct J.O.C. parole hearing with a 3 year minimum parole eligibility date. Parole on 12/5/2022 specifically said that the only way to see parole before "4" years is to have "the court" amend my J.O.C. to fix this error, even though on the corrected and incorrect J.O.C. it says and always has said on both eighteen (18) years maximum with a minimum of three (3) years. Also on my 7/12/2022 it specifically says my guilty plea agreement is a stipulated and aggregated sentence of 3 to 18 years. On my P+P Pre-Sentence Investigation it also states a 3-18 aggregated and stipulated sentence as Judge David Jones accepted on 7/12/2022 Settlement Conference G.P.A. There

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CLAIM #4

Page 5

J.O.C. / Offender Management

Is 14th Amendment Due process violations and 8th Amendment Violations under Cruel and Unusual Punishment, I Am Being Forced to Serve over my Agreed Upon 3 year minimum Without a Parole hearing or opportunity to Be Released on parole and I Am Rounding up to 90 Days "over" my minimum and counting without a Lawful and Legal and correct By NEVADA Revised Statutes Parole hearing. I Am Being Forced to Serve a 4 year Sentence When All Court and stipulated Guilty Plea Agreements state 3-18 years Aggregated, as well as Even my Incorrect J.O.C. states 3-18 years But O.M.D., @ H.D.S.P. and Probation and Parole and offender management Forcing me to serve 4 years on a Illegal technicality When All Court proceedings, G.P.A.'s and Sentencing states 3-18 years, And now that my J.O.C. is Fixed and Amended Correctly I Am 3 months past my Agreed upon 3 year minimum and counting, I notified Mr. Wikoff about this Issue and Warden Brian Williams and they are not as of 6/26/23 Doing anything to correct this mistake or put me in for a immediate parole hearing or Reverse my 6/5/2023 Denial of Parole to Granted to correct this now with my correct Amended J.O.C. Filed.

E. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while incarcerated? ☒ Yes ☐ No
2. Has this Court or any other court designated you as subject to "three strikes" under 28 U.S.C. § 1915(g)? ☐ Yes ☒ No
3. If you have "three strikes" under 28 U.S.C. § 1915(g), does this complaint demonstrate that you are "under imminent danger of serious physical injury"? ☐ Yes ☒ No

F. REQUEST FOR RELIEF

I believe I am entitled to the following relief: \$500,000 in Compensatory Relief
\$1,000,000 in Punitive Damages, plus \$3,000 a Day For
Each Day I go Past my minimum 4-21-2023 Without A
Parole hearing with The correct Amended J.O.C. Parole Being
Granted Immediately and Every Day I go over my P.E.D. is
Tripled and taken off my PEXD. All medical Be outsourced to
A Hospital and To Be given my CPAP Machine + See A Gastro Doctor.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

(name of person who prepared or helped
prepare this complaint if not the plaintiff)

(signature of plaintiff)

(date)

ADDITIONAL PAGES

You must answer all questions concisely in the proper space on the form. Your complaint may not be more than 30 pages long. It is not necessary to attach exhibits or affidavits to the complaint or any amended complaint. Rather, the complaint or any amended complaint must sufficiently state the facts and claims without reference to exhibits or affidavits. If you need to file a complaint that is more than 30 pages long, you must file a motion seeking permission to exceed the page limit and explain the reasons that support the need to exceed 30 pages in length.